IN THE HIGH COURT OF JUDICATURE
ANDHRA PRADESH
AT HYDERABAD

THE HON'BLE SRI JUSTICE J.CHELAMESWAR
And
THE HON'BLE SRI JUSTICE M.VENKATESWARA REDDY

WP No. 18278 of 2006

Between :

Sourashtra Choultry,
Rep. by its Managing Trustee
M.N.Radhakrishnan, Madurai,
Tamil Nadu .. Petitioner

And

The Commissioner,
Tirupati Municipality,
Tirupati, Chittoor District at
Tirupati .. Respondent

Dated : 23rd October, 2006

ORDER : (per JC,J)

Writ Petition is filed with the prayer as follows :

> "For the reasons stated in the accompanying affidavit, this Hon'ble Court may be pleased to issue a Writ or any appropriate Writ or Writs or direction/s more particularly in the nature of Writ of Mandamus declaring the action of the respondent in assessing the property tax in respect of the property bearing door No. 15-1-14, G Car Street, Revenue Ward No. 15, vide Assessment No. 32306 as arbitrary, illegal and unjust; and pass such other order/s as this Hon'ble Court may deem fit and proper in the circumstances of the case."

The petitioner is a Trust running a choultry at Tirupati. Aggrieved

by a notice of the respondent-Municipality demanding payment of property tax, the present writ petition is filed.

The substance of the grievance in the writ petition is that the choultries such as the one run by the petitioner-trust are exempt from taxation under Section 88 of the Municipalities Act (for short `the Act') and the petitioner was not put on notice of the proposed assessment and if only the petitioner were to be put on notice about the proposed assessment of the property tax under the Act, the petitioner could have filed his objections and establish that he is entitled for exemption under Section 88 of the Act.

On the other hand, the learned Standing Counsel for the respondents stated that he is instructed by the respondent that a notice in fact was issued to the petitioner, but the petitioner has not chosen to file his objections.

Relevant portion of Section 88 of the Municipalities Act read as follows :

> **"88. General exemptions :- (1)** The following buildings and lands shall be exempt from the property tax :- (a) places set apart for public worship and either actually so used or used for any other purpose;
> (b) choultries for the occupation of which no rent is charged and choultries the rent charged for the occupation of which is used exclusively for charitable purposes;

A reading of the said sub-section, no doubt, exempt choultry from the property tax leviable under the Municipalities Act subject of course to the two conditions i.e., choultry is providing for accommodation without collection of any rent or in the alternative the rent collected if any from the choultry exclusively used for charitable purposes. It follows therefore that choultries are not automatically exempted under the Municipalities Act, but they are entitled to be exempted on fulfilling either of the above mentioned conditions – whether the particular choultry fulfilled either of the above

mentioned conditions are not is a question of fact which could only be established on an appropriate enquiry.

Notwithstanding the dispute about the fact that the assessment order was preceded by a notice, the learned Standing Counsel on instructions stated that even at this stage, the Municiplaity is willing to consider the objections of the petitioner, if any, if the petitioner files appropriate material before the Municipality to establish its case.

In the circumstances, we are of the opinion that the matter can be disposed of at this stage directing the respondent Municipality to conduct an enquiry into the fact that whether the petitioner is entitled to exemption under Section 88(b) of the Municipalities Act. The petitioner will file his objections if any for the proposed assessment within a period of ten days from the date of receipt of a copy of this order. On receipt of the said objections, the respondent Municipality shall pass an appropriate order in accordance with law.

(J.CHELAMESWAR, J)

(M.VENKATESWARA REDDY, J)

23rd October, 2006.

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